

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE & PARCEL
SELECT CONTRACT 5 (MC2023-105)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2023-106

USPS RESPONSE TO CHAIRMAN'S INFORMATION REQUEST NO. 1
(January 30, 2023)

The United States Postal Service hereby provides its response to Chairman's Information Request No. 1, which was issued on January 23, 2023. A response was due by January 30, 2023. The questions are reprinted verbatim in the attached, and are followed by the Postal Service's response. Questions 6 and 7 and their responses are being filed under seal. The Postal Service herein incorporates by reference its Application for Non-Public Treatment in this docket for the protection of the material filed under seal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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REQUEST:

1. Please refer to paragraph 1.27 of the agreement, which defines the term “subcontractor” to mean: “... any person or entity acting under written contract, or as an Affiliate of Postal Service, to perform Services on Postal Service’s behalf or to fulfill Postal Service’s obligations under this Contract.” Request, Attachment B at 4. Please identify all categories of Postal Service contractors that qualify as subcontractors under this agreement, including, but not limited to, third-party providers of air and/or ground transportation.

Response: The Subcontractors performing services in connection with this Agreement are listed in Exhibit B to the Agreement. They provide route optimization and secure offsite storage.

2. Please confirm that the Postal Service's contracts with all "subcontractors" identified in the response to question 1 already meet the requirements of paragraph 21.2(b)(i-iv). See *id.* at 28-29. If not confirmed, please indicate the projected administrative costs of revising all such contracts to conform to the requirements of that paragraph and refile the supporting financial workpapers to include such costs and all supporting calculations.

Response: Confirmed. The Postal Service supplier contracts contain terms that cover such aspects as confidentiality, non-disclosure, privacy, and liability insurance coverage.

3. Please refer to paragraph 21.2 of the agreement, which states: “Customer shall have the right to reasonably disapprove of any Subcontractors, by written notice to Postal Service, in which case Postal Service shall substitute a new Subcontractor within a reasonable period of time.” *Id.* at 29. Please discuss the impact on the Postal Service’s operations if the contract partner exercises its option under paragraph 21.2 to disapprove of particular “subcontractors” identified in the answer to question 1. (For example, if the contract partner objects to a particular third-party transportation provider, the requested discussion should address how the Postal Service’s operations would be affected by the need to segregate the contract partner’s packages for transport by a different provider.) Please additionally discuss the potential cost impact of any accompanying operational changes necessary to comply with the terms of paragraph 21.2 and refile the supporting financial workpapers to include such costs and all supporting calculations.

Response: The term regarding the substitution of a subcontractor per Customer’s request requires that the Postal Service substitute a subcontractor within a reasonable timeframe. While the Postal Service may incur increased costs to substitute a subcontractor in such scenario within a very short time frame, the term requires that the Postal Service make the substitution within a reasonable timeframe. Government supplier contracts and some industry supplier contracts for such services typically require lead times of approximately six months. In such case, if the Parties could not agree that such a timeline would be reasonable, the Postal Service would consider exercising its right to terminate the contract for its convenience within 180 days.

4. Please refer to paragraph 21.2 of the agreement, which states: “Customer reserves any rights of termination against such Subcontractors pursuant to Section 3.2 (Termination for Cause by Customer).” *Id.* Please confirm that the contract partner’s right of termination against a subcontractor under this provision is limited to terminating this entire negotiated service agreement. If not confirmed, please explain.

Response: Confirmed. The contract partner’s right of termination against a subcontractor under this provision is limited to terminating this entire negotiated service agreement.

5. Please confirm that the Special Logistics Services offered by the Postal Service under paragraph 4.4 of this agreement are limited to the operational details covered by the Memorandum of Understanding described under paragraph 6.18, when the latter paragraph is interpreted consistent with Commission guidance in Order No. 6401.¹ If not confirmed, please describe in detail the extent of the Special Logistics Services the Postal Service will provide the customer and indicate where in the supporting financial workpapers the costs of providing such services are reported. If such costs were not reported, please refile the supporting financial workpapers to include the costs of providing such services and all supporting calculations.

Response: Confirmed. Special Logistics Services offered by the Postal Service under paragraph 4.4 of this agreement are limited to the operational details covered by the Memorandum of Understanding described under paragraph 6.18.

¹ See *id.* at 6, 20; Docket Nos. MC2023-93 and CP2023-94, Order Adding Parcel Select Contract 56 to the Competitive Product List and Providing Guidance, January 11, 2023, at 6-7 (Order No. 6401).

8. Please explain the extent to which each of the following contractual provisions affecting the Postal Service's legal liability differs from the Postal Service's legal liability in its contractual relationships for typical negotiated service agreements. For each listed contract provision, please include an estimate of the costs incurred by assuming such liability, a description of how that estimate was calculated, and indicate where in the supporting financial workpapers such costs are reported. For any listed provision where the Postal Service projects a nonzero cost and such costs were not reported in the supporting financial workpapers, please refile the financial workpapers to include such costs and all supporting calculations.
- a. Paragraph 10.3, waiving limits on liability.
 - b. Paragraph 16.3, acknowledging irreparable harm and consenting to injunctive relief.
 - c. Paragraph 19, indemnifying contract partner for defense costs, attorneys' fees, and judgements.
 - d. Paragraph 22.2, agreeing to litigate all claims in federal courts in a particular state, applying federal law and the law of that state.

Response:

- a. The waiver expressed in Paragraph 10.3 is clarified by the "Value of Products" language in Paragraph 10.2. In that respect, liability as described in Paragraph 10.3 is not unlimited.
- b. From the perspective of data transmissions to/from Trading Partners and applications exchanging data using our managed file transfer product, the Postal Service can agree the statement is accurate. Internal file transfers are encrypted and external data transmission conduits are secure using industry standards that align with AS-805.
- c. While not commonly used, the Postal Service has in the past included a term agreeing to indemnify a customer from and against any loss,

damage, settlement, cost, expense, and any other liability (including reasonable attorneys' fees) arising out of or resulting from any third party allegation or claim based on an agreed list of circumstances, with the exception of claims resulting from the customer's negligence or willful misconduct.

d. It is not unusual for the Postal Service to agree to litigate claims in federal courts in a particular state, applying federal law where it is applicable, and state law where federal law is not applicable.

9. Please confirm that the extent of technical support to be provided to the contract partner under paragraph 17.2, including but not limited to maintenance of a tracking system in compliance with Customer specifications, does not differ from the support the Postal Service provides to partners of typical negotiated service agreements. See *id.* at 25. If not confirmed, please explain the extent of the differences and indicate where in the supporting financial workpapers the additional costs of providing that expanded technical support are reported. If such costs were not reported, please refile the supporting financial workpapers to include the costs of providing such support and all supporting calculations.

Response: Confirmed.

10. Please confirm that the Postal Service's obligations under paragraphs 17.5 through 17.9 can be met using existing Postal Service information technology resources at no additional cost to the Postal Service. See *id.* at 26. If not confirmed, please identify the changes to equipment or procedures necessary to comply with these provisions and indicate where in the supporting financial workpapers the additional costs of such changes are reported. If such costs were not reported, please refile the supporting financial workpapers to include such costs and all supporting calculations.

Response: Confirmed.

11. Please confirm that, other than as specified in the responses to questions 1-10 and identified in the refiled supporting financial workpapers, all of the costs of meeting the Postal Service's obligations under this contract are accurately and completely identified in the supporting financial workpapers. If not confirmed, please identify all other terms of the contract that could lead to additional costs and include all such costs and supporting calculations in the refiled supporting financial workpapers.

Response: Confirmed.